

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 20, 2015 at 2:00 P.M.

1. [11-46902](#)-C-13 JAVIER PEREZ AND CLOTILDE MOTION TO MODIFY PLAN
TJW-3 SALINAS 9-1-15 [[73](#)]
Timothy Walsh

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The Trustee does not believe that the Schedule I filed 6/2//15

accurately reflects Debtors' income given that it is unlikely that Debtor Javier Perez is still receiving unemployment compensation since he lost his job over 46 months ago.

2. Debtors are delinquent \$280 in plan payments.

3. The motion does not cite applicable Bankruptcy Code provisions.

As the Trustee's concerns highlight, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

2. [12-24503](#)-C-13 JOSE ROBIN/DOLORES
RIN-7 SANTAYANA
Michael Rinne
DEBTOR DISMISSED 9/20/15
JOINT DEBTOR DISMISSED
9/20/15

MOTION TO VACATE DISMISSAL OF
CASE
9-13-15 [[121](#)]

Tentative Ruling: The Motion to Vacate Dismissal has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on September 13, 2015. Twenty-eight days' notice is required.

The Motion to Vacate Dismissal has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Vacate Dismissal.

Debtors move the Court to vacate the Order of Dismissal After Default of Chapter 13 Plan Payments on the basis that he can become current at this time. The debtors have paid at total of \$125,198.00 into the since March of 2012. Completing the Chapter 13 case is of great importance to the debtors. The reason the debtors missed the payments lays in the fact that the debtors' parent in the Philippines fell ill and the debtor had to travel to the Philippines to care for their ill parent.

Trustee's Response

The Chapter 13 responds to the Motion stating that:

1. The docket reflects that Attorney Michael Rinne is attorney of record, however, a substitution of attorney signed by all parties was filed on 8/31/15, although no order approving the substitution has been filed by the court.

2. The Debtors did not oppose the Motion to Dismiss.
3. Debtor is \$8,360 delinquent in plan payments to the Trustee to date. The last payment of \$3,980, which the Debtors' plan payment, was received on September 1, 2015. Debtor has paid a total of \$133,158 into the plan thus far.

Discussion

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

The court has filed an order approving the motion to substitute attorney thereby resolving the Trustee's first concern. Dkt. 131. Considering that the Debtors' parent in the Philippines fell ill and the Debtor had to travel to the Philippines to care for their ill parent, the court finds that the reason that the Debtors fell behind in plan payments and did not oppose the motion to dismiss constitutes "mistake, inadvertence, surprise, or excusable neglect" under Rule 60(b).

The court's decision is to grant the Motion to Vacate Dismissal.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Vacate Dismissal filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Vacate Dismissal is granted.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors are \$2,808.53 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,429.53 is due on October 5, 2015. Debtors have paid \$2,758 into the plan to date.
2. The Plan fails to provide for the priority IRS claim in the amount of \$21,597 (Claim #3-1).
3. The Plan exceeds 60 months.
4. The attorney fees listed in §2.06 of the Plan conflict with the Rights and Responsibilities. Dkt. 33. The Plan states that \$1,950 paid by the Debtor through the Plan, but the Rights and Responsibilities reflects that \$2,500 was charged and \$1,950 was paid by the Debtor, leaving \$550 to be paid through the Plan.

Discussion

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 9, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Terence Campolieti ("Debtor") seeks court approval for Debtor to incur post-petition credit. PNC Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,443.28 a month to \$1,081.42 a month. The relevant terms of the agreement are as follows:

- a. Principal balance as of September 1, 2013 shall be \$307,188.10, of which \$48,366.95 shall be deferred, shall not accrue interest, and upon which Debtor will not pay. Debtor will pay on the "interest bearing principal" of \$258,751.15;
- b. The loan term shall be 40 years;
- c. The interest rate shall be 4.0% for the life of the loan;
- d. Monthly payments on the note shall be \$1,081.42 plus escrow (property taxes and insurance). Debtor's current monthly payment is \$1,443.28, which may fluctuate nominally based upon the need to adjust escrow from time to time Debtor is current on all Plan payments and the Chapter 13 Plan is not in default.

All liens secured by the subject property shall be paid in a manner consistent with the confirmed Chapter 13 Plan. Debtor will not receive any proceeds from the loan modification. The balance of any pre-petition mortgage arrears shall be cured by the loan modification. Debtor does not

intend to pay off his Plan as a result of this agreement. Debtor's income and expenses have not changed since the last time he submitted them to the Court. Debtor remains able to afford the payments on this loan modification and his ongoing Plan payments.

The Motion is supported by the Declaration of Terence Campolieti . The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law
are stated in the Civil Minutes for the
hearing.

The Motion to Approve the Loan
Modification filed by [name of movant] having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the court authorizes
Terence Campolieti ("Debtor") to amend the
terms of the loan with PNC Mortgage, which is
secured by the real property commonly known as
6401 Rabbit Hollow Way, Elk Grove, California,
on such terms as stated in the Modification
Agreement filed as Exhibit 1 in support of the
Motion, Dckt. 57.

5. [15-21912](#)-C-13 ENOCH MARSH
DEF-4 David Foyil

MOTION TO VALUE COLLATERAL OF
PAUL MANKA
8-25-15 [[74](#)]

Thru #7

Final Ruling: No appearance at the October 20, hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 25, 2015. Twenty-eight days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Paul Manka, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 14702 Hobnob Way, Nevada City, California. The Debtor seeks to value the property at a fair market value of \$410,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$459,685. Paul Manka's attorney's lien secures a debt with a balance of approximately \$27,780. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Paul Manka secured by a attorney's lien recorded against the real property commonly known as 14702 Hobnob Way, Nevada City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$410,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor's Plan decreases the plan payments from \$3,220 to \$2,575 for the first five months of the plan.
2. The Plan relies on the pending motion to value the collateral of Paul Manka.
3. The Plan treats the State Board of Equalizations priority claim in the amount of \$740.48 as a Class 2 secured claim.

Discussion

The court has granted the motion to value the collateral of Paul Manka thereby resolving one of the Trustee's concerns. However, as the Trustee's remaining concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 12, 2015. 28 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Dismiss.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. After the court sustained objections to confirmation on June 2, 2015, the Debtor failed to file an amended plan.

Debtor's Opposition

Debtor has filed and served a first amended chapter 13 plan and set a hearing for confirmation of said plan for October 20, 2015. The proposed plan addresses the concerns of the chapter 13 trustee as raised at the section 341 meeting of creditors.

The primary reason for the delay is that Debtor may have a claim against the California Department of Justice related to negligence in connection with its investigation related to the murder of Debtor's brother Isaiah Marsh.

Prior Hearing

At the hearing on September 9, 2015, the court continued the hearing on the Motion to Dismiss to 2:00 p.m. on October 20, 2015, to be conducted in conjunction with the hearing on Debtor's Motion to Confirm

the Chapter 13 Plan.

Discussion

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan. The court is not prepared to confirm the plan at this time.

The motion is denied, and the case is not dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case
filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to Dismiss is
denied and the case is not dismissed.

8. [15-23915](#)-C-13 ELIZABETH ARMAS
TJW-2 Timothy Walsh

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA N.A.
9-9-15 [[40](#)]

Thru #10

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 9, 2015. Twenty-eight days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 925 Valle Vista, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$254,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$476,755. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$66,366. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 925 Valle Vista, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$254,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

9. [15-23915](#)-C-13 ELIZABETH ARMAS
TJW-3 Timothy Walsh

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK N.A.
9-9-15 [[45](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 9, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is continued to November 24, 2015 at 2:00 p.m.
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject personal property commonly known as 2011 Toyota Rav4. The Debtors seeks to value the property at a fair market value of \$15,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The Debtor bases the valuation, in part, upon NADA guidelines, which states the value for an "average trade in at \$14,000, an for a clean trade in \$14,925." The Kelly Blue Book (KBB) lists "Sell to Private Party Very Good Condition, \$14,379."

Wells Fargo Bank, N.A. filed a claim in the amount of \$19,184.32 secured by the subject property alleging that the secured portion of said claim is \$18,475.

Creditor's Objection

Wells Fargo Bank, N.A., objects to Debtor's Motion to Value because the proposed valuation is substantially below the "clean retail" value given in NADA and is not based of KBB "retail value."

Creditor requests a continuance for at least 30 days to obtain its own verified appraisal of the subject property.

Creditor also objects to the court's consideration of Debtor's exhibits including "NADAguides Price Report" and "kbb.com" on the grounds that they are inadmissable hearsay.

Discussion

Given that the value of the subject property is in dispute, the court's decision is to continue the matter to November 24, 2015 at 2:00 p.m. allow Creditor to obtain a verified appraisal of the subject property.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by
Debtors, having been presented to the court,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion pursuant to
11 U.S.C. § 506(a) is continued to November
24, 2015 at 2:00 p.m.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The Plan relies on the pending motion to value the collateral of Wells Fargo Bank, N.A..

Creditor's Opposition

Wells Fargo Bank, N.A. objects to the \$15,000 value given the vehicle securing its claim based on a retail sales installment contract. Creditor also objects to the \$290 monthly adequate protection payments under the proposed Plan.

Discussion

As the Trustee's concern highlights, the Plan relies on a pending motion to value the collateral of Wells Fargo Bank, N.A. This matter will not be resolved for at least 30 days. Therefore, the court is not prepared to confirm the Plan at this juncture.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not

confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2) (iii).

Local Rule 9014-1(f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 5, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Incur Debt is granted.

The motion seeks permission to purchase the residence in which the Debtors currently reside, commonly known as 1628 Vandenburg Circle, Suisun City, California, which the total purchase price is \$345,800, with a mortgage loan in the amount of \$339,536 through Pinnacle Capital Mortgage. The loan is a 30 year fixed rate loan with a 4.624% interest rate. The monthly payments will be \$1,738.99. Taxes and insurance will be impounded in the amount of \$460 for a total monthly mortgage payment of \$2,198.99--approximately \$500 less than the Debtors currently pay in rent on the property.

The debtors are in a 100% repayment plan, and may be able to complete their plan sooner than the proposed 60 months with the savings from the purchase of the residence.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable given that the Plan will be paid at 100% and the monthly mortgage payment is \$500 less than the Debtors' monthly rental payment. The motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Terrance and Diana Lipkins, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 20.

12. [15-25721](#)-C-13 NICHOLAS HUGGINS
SJS-2 Scott Johnson

OBJECTION TO CLAIM OF
HARLEY-DAVIDSON CREDIT
CORPORATION, CLAIM NUMBER 7-1
8-28-15 [[33](#)]

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 7-1 of Harley-Davidson Credit Corp. is overruled.

Nicholas Huggins, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Harley-Davidson Credit Corp. ("Creditor"), Proof of Claim No. 7-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$17,774.22. Objector asserts that the motorcycle was repossessed in October, 2014.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Creditor's Objection

Creditor is not in possession of the vehicle. Given contractual , the account was flagged for repossession prior to this bankruptcy filing, but creditor was able to locate the borrowers and the collateral itself. Creditor is in the process of gathering additional information as to the prior recovery attempts of the property and will supplement this opposition with a supporting declaration as soon as available.

Discussion

Objector has not met his burden of providing a substantial basis to overcome the prima facie validity of a proof of claim. Debtor has failed to present any evidence of the alleged repossession beyond his personal declaration. Based on the evidence before the court, the creditor's claim is allowed. The Objection to the Proof of Claim is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Harley-Davidson Credit Corp., Creditor filed in this case by Nicholas Huggins, the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 7-1 of Harley-Davidson Credit Corp. is overruled.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 24, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor failed to file Rights and Responsibilities.
2. Debtor failed to file a motion to value the claim of Abilene Teachers.
3. Debtor's projected disposable income on Schedule J reflects \$1,290, however Debtor is proposing plan payments of \$1,168 per month.
4. At the first meeting of creditors held on 9/17/15, Debtor admitted that he was no longer employed and was no longer receiving income.
5. Debtor failed to provide a breakdown of his rental income and expenses on Schedule I.

6. Debtor is proposing to pay \$250 per month to a student loan on Schedule J and a 0% dividend to unsecured creditors.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

14. [10-35624](#)-C-13 ERIK/RENEE SUNDQUIST
[14-2278](#) ACS-3
SUNDQUIST ET AL V. BANK OF
AMERICA, N.A. ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
8-17-15 [[64](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 17, 2015. 28 days' notice is required. That requirement was met.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing on the Motion to Dismiss Adversary Proceeding to October 27 at 9:30 a.m.

Given that this Motion pertains to an adversary proceeding, the court shall transfer the matter to its law and motion hearing calendar. The hearing on the matter is continued to October 27 at 9:30 a.m.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding
having been presented to the court, and upon
review of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss
Adversary Proceeding is continued to October 27
at 9:30 a.m.

15. [14-23926](#)-C-13 DANIEL/MARY GUTTEREZ
PLC-6 Peter Cianchetta

MOTION TO RECONSIDER
9-15-15 [[113](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 17, 2015. Twenty-eight days' notice is required.

The Motion to Reconsider has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion to Reconsider.

Debtors sought a determination they were the prevailing party on the contract in bringing the Objection to Late Filed Claim, Doc 102. The Court determined that Debtors were the prevailing and ordered the Fees to be paid by the Chapter 13 Trustee as an administrative Expense. Doc 110.

Debtors seek reconsideration as to who will pay the attorney fees only. As prevailing Party, Debtors are entitled to an award Attorney Fees pursuant to the Contractual provisions made reciprocal under California Civil Code Section 1717.

Discussion

Rule 60(b)

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

As prevailing party in a meritorious objection to claim, Debtors are entitled to an award attorney fees pursuant to the Contractual provisions made reciprocal under California Civil Code Section 1717. Debtor's objection to claim quotes the contractual language giving rise to the contractual attorney fees. Dkt. 102, p.2.

The civil minute order awarding attorney fees for a meritorious objection to claim , dkt. 110, inadvertently ordered the fees to be paid by the Chapter 13 Trustee as an administrative. The order shall be amended to state that Creditor Old Republic Insurance Company is to pay the awarded fees.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate Dismissal filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Reconsideration is granted, and the civil minute order awarding attorney fees for a meritorious objection to claim , dkt. 110, shall be amended to state that Creditor Old Republic Insurance Company is to pay the awarded fees.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor is \$54,198 delinquent in plan payments to the Trustee to date. Debtor has paid \$20,363 into the plan to date. The proposed plan would increase Debtor's monthly plan payment from \$2,007 to \$2,309.
2. The proposed plan proposes to add \$5,628 in post-petition mortgage arrears to Class 1, which appears to be in excess of what is owed. Per the Trustee's calculation, the principal due is \$4,020.

Debtor's Reply

Debtor agrees to change the mortgage arrears to Class 1 to \$4,020 and states that she will be able to afford plan payments of \$2,309 per month.

Discussion

As the Trustee's concern highlights, Debtor is severely delinquent in plan payments. Accordingly, the court is not inclined to approve the modified plan at this time given that it increases the monthly plan payment by over \$300. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Also #18

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtor having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on August 28,
2015 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee for approval
as to form, and if so approved, the Chapter 13
Trustee will submit the proposed order to the
court.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtor having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on August 28,
2015 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed
order to the Chapter 13 Trustee for approval
as to form, and if so approved, the Chapter 13

Trustee will submit the proposed order to the court.

19. [15-26234](#)-C-13 KATHERINE GERRARD
DPC-1 David Silber

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
9-9-15 [[26](#)]

Also #20

Tentative Ruling: The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2015. 28 days' notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The court's decision is to sustain the Objection.
--

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on March 19, 2014 (Case No. 13-30311). Debtor filed this Chapter 13 case on August 5, 2015.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Discharge filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-26234.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 23, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is under the median income and proposes plan payments of \$184 for 60 months. Debtor can increase the plan payment by \$629 per month.

3. The Plan fails to propose a dividend to unsecured creditors. Although Debtor fails to list any unsecured creditors on Schedule F, it appears that unsecured claims were filed in Debtor's prior bankruptcy case (#15-23332-13), which was dismissed for failure to timely file documents.
4. The Plan may fail the Chapter 7 liquidation analysis on account that Debtor failed to list bank accounts on Schedule B notwithstanding providing Trustee with bank statements. Further, Debtor admitted at the 341(a) meeting that she was owed commissions from prior employment, which is not listed in the Schedules.
5. The Plan fails to provide for the secured claim of Provident Funding.
6. The Plan fails to provide for the priority tax claims filed by the FTB and IRS.
7. The plan will complete in 73 months exceeding the maximum statutory amount of 60 months.

The court has considered the Trustee's numerous concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2015. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtors having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on September 2, 2015
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor does not appear to be able to make payments as proposed by the plan. Plan payments under the confirmed plan are \$36,280 total paid in through month 9, then \$4,375 for 51 months. Debtor is currently \$19,206 delinquent under the confirmed plan. Debtor's modified plan proposes payments of \$161,454 total paid in through August 2015, then \$4,375 per month for the rest of the plan term beginning September 25, 2015. In addition to the monthly payment, Debtor proposes lump sum payments of \$9,650 in March and July 2016.

Debtor's motion and declaration state that Debtor has sufficient income to fund the plan through her salary and lump sum earnings. Throughout the life of this case, Trustee has filed numerous notices of default and motions to dismiss

due to delinquency. Trustee is uncertain Debtor will be able to maintain the monthly plan payments of \$4,375 when she has been unable to in the past with the same payment. Debtor states she will be working additional teaching jobs to fund payments proposed, but provides no specific information regarding these jobs.

2. Debtor has not filed the fourth modified plan in the docket, separately. Local Bankruptcy Rule 5005-1 states that the official record is the electronic record. The plan was filed as an attachment to the Motion (DN 162).
3. Section 6.07 of Debtor's modified plan proposes additional dividends in March 2016 to secured creditors. Debtor lists Rushmore Loan Management Post-Petition Late Fee Claim is to receive an additional dividend of \$145 in March 2016. Trustee is uncertain what claim Debtor is referring to. Debtor's plan filed February 6, 2012, confirmed May 1, 2012, provided for a late fee in Class 1 of \$131.28. Trustee has disbursed \$105.37 to this creditor with a principal due of \$25.91.

The Trustee's concerns are well-taken, and the court shares Trustee's concerns that Debtor will be able to afford plan payments considering her history of delinquency. Debtor has provided insufficient evidence to explain to the court how plan payments will be afforded. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2015. Thirty-five days' notice is required. That requirement was met. This requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor is delinquent \$198 under the proposed plan.

DEBTORS' RESPONSE

Debtors responds to Trustee's objection, stating that because of a calendaring oversight, Debtors did not make their plan payments timely but payments were made and Debtors have brought the plan payments current. Debtors provide the declaration of Ann P. Gilbert substantiating that the delinquent payment has been made, and avers that payments are current.

DISCUSSION

The Debtors having addressed and remedied Trustee's only concern, the modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan filed on September 8, 2015 is confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to xxxx the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain of Debtor's ability to pay. The Debtor has not filed a supplemental Schedule I or J in support of the motion. Debtor has not provided current paystubs to Trustee. The most recent schedules I and J were filed 12/06/12 and reflect the ability to pay \$3,035 monthly.
2. Debtors' plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' schedule J reflects property insurance of \$197 monthly and property taxes of \$125 monthly. The Notice of Mortgage Payment Change filed August 10, 2015 by Wells Fargo Bank, N.A. indicates a monthly escrow amount of \$263.34 which is included in the Class 1 monthly contract installment.
3. According to Trustee's calculations, the plan takes 64 months to

complete. Proposed monthly payments are \$3,120 which is \$2,960 net of Trustee fees. After payment of monthly contract installment of \$1,732.48, \$1,228.40 is available for all other claims. Debtor has completed 33 months of the plan. \$36,933.18 remains to secured creditors for principal and interest. Thus, \$36,933.18 divided by \$1,228.40 amount to 31 months remaining.

Trustee points out several deficiencies with Debtor's proposed plan, and the court notes these deficiencies and shares Trustee's concerns. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

25. [15-26550](#)-C-13 DOUGLAS WADLEY
JMC-1 Joseph Canning

MOTION TO EMPLOY TWIN OAKS REAL
ESTATE, INC. AS BROKER(S)
9-17-15 [[22](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

The Movant having filed a Withdrawal of the Motion to Employ, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Employ was dismissed without prejudice, and the matter is removed from the calendar.**

Also #27

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2015. 28 days' notice is required. This requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Dismiss.

PREVIOUSLY

This matter was originally on calendar on September 9, 2015. The court continued the motion to take place concurrently with a Motion for Hardship Discharge, set for hearing today.

SUMMARY OF MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$5,654 with the last payment received May 07, 2015. Trustee shows \$8,884 is due, and thus debtor is delinquent \$3,230 in plan payments. Debtor's monthly payment is \$602. Prior to the hearing, an additional \$602 will become due, and as a result debtor will need to pay \$3,832 to be current by the hearing.

DEBTORS' RESPONSE

Debtors respond to Trustee's motion, stating that they believe that every effort to cure the arrears have been made. As such, Debtors state that given that their hardship has caused the delinquency, Debtors have submitted a request for hardship discharge filed on August 20, 2015.

DISCUSSION

The court has granted Debtors' Motion for Hardship Discharge. Cause does not exist to dismiss this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

Tentative Ruling: The Motion for Hardship Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 21, 2015. 28 days' notice is required. This requirement was met.

The Motion for Hardship Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion for Hardship Discharge is granted.

PREVIOUSLY

The court, having determined that Debtors had not provided a satisfactory or comprehensive explanation of why Joint Debtor David Lynn Venable will not be able to return to work after disability benefits have been depleted, for how long he expects to receive those benefits, or an explanation as to the increase in expenses, ordered further briefing and continued the hearing date to today.

REVIEW OF MOTION

Debtors David Lynn Venable and Nancy Lorraine Venable, ("Movant") seek a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtors are at the time of filing this motion in the 18th month of their 60 month plan. Debtors state that during this case, Joint Debtor retired in the normal course of business and now makes approximately 50% of what she made previously as an employed individual. Shortly after retirement, Joint Debtor Nancy Lorrain Venable was diagnosed with breast cancer.

Joint Debtor David Lynn Venable no longer receives income from Lake Wild Association and is collecting disability income. He makes approximately

\$964 per month according to his \$241 weekly disability check. Once his disability is depleted, Debtor will be physically unable to return to the workforce. Debtor is on disability for an undetermined length of time and it is difficult to foresee when this temporary income will stop and he will no longer have income.

Debtors state that they have adjusted their schedules to reflect the above, and that they have amended their expenses to reflect increased maintenance to their home of \$70 per month, and increase for out-of-pocket medical from \$25 to \$125 per month, an increase in transportation from \$150 to \$450 to reflect visits to the doctor, etc., an increase in life insurance policy from \$175 to \$250, and health insurance increase to \$200 per month.

Debtors further state that they have already provided more to unsecured creditors through the plan than they would have received in a chapter 7 liquidation. Debtors state that a plan modification is not practicable because Joint Debtors' income has been reduced and will soon be depleted once disability checks are no longer income, and expenses have rapidly escalated due to the recent cancer diagnosis. Debtors were already living under a difficult income structure with little room to make decreases.

TRUSTEE'S OPPOSITION

The Trustee does not object to the Debtor's request for hardship discharge so long as Debtors are able to address Trustee's concerns. Trustee believes Debtors meet the requirements of 11 U.S.C. § 1328(b)(1), and here object so that Debtor can prove that a modification is not practicable under 11 U.S.C. § 1328(b)(3). Trustee requires that Debtor fully explain and detail the increase in expenses provided to in the motion and amended schedules, and why Mr. Venable is unable to return to work once his disability is depleted, and it does not appear that Debtors have attempted to determine the length of time Debtor will be receiving disability benefits.

DEBTORS' SUPPLEMENTAL BRIEF

On September 30, 2015, Debtors filed a supplemental brief. Debtors provide that the California State Disability has notified the Debtors that benefits have been terminated as of September 11, 2015. Debtors expect no further disability pay from the state. Debtor has been notified by his employer that his position has been eliminated and that as of September 11, 2015, he is laid off. Debtor has no further expectation of income from his employer.

On September 15, 2015, Debtor applied for EDD but has not been informed of his eligibility or amount of benefit if qualified. If he qualifies, Debtor expects a maximum income of \$450 per week. However, this amount will not replace the lost disability income or allow for the continuation or modification of a plan.

The increase in medical expenses and decrease in income means that Debtors are even further unable to support a chapter 13 plan.

TRUSTEE'S RESPONSE

Trustee responds to Debtor's supplemental brief, providing that Trustee based his opposition to hardship discharge solely on the basis of whether modification was practicable, raising four issues:

1. Debtor's actual budget cannot be negative—they can only spend money they have and must instead be borrowing if they are meeting expenses higher than income.
2. Debtor has not provided the specifics regarding the increase in transportation expenses by \$300, such as how frequently they go to appointments and at what distances.
3. Debtor has not given an explanation of the duration of Mr. Venable's disability.
4. Debtor has not given an explanation as to whether Mr. Venable will be employed once the disability benefits expire.

Debtors in their supplemental brief address only numbers (3) and (4) above. However, Debtors have not addressed the negative disposable income issue other than to say that medical treatments will be further delayed until finances stabilize, or the basis of the \$300 increase in transportation. Debtors' counsel has not prepared a declaration of Debtors addressing any of these issues.

DISCUSSION

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

The element in contention, and the issue that the court ordered further briefing on, was the third: that pursuant to 11 U.S.C. § 1328(b)(3), modification of the plan is not possible under 11 U.S.C. § 1329. Debtors submitted a supplemental brief, explaining to the court that Debtors are unable to support the modification of a plan. Debtor David Venable is no longer receiving disability income of \$964, has been terminated from his place of employment, is uncertain if Debtor qualifies for disability income, and face increasing medical expenses for the treatment of Debtor Nancy Venable's sudden breast cancer diagnosis. The court, considering the record, declarations provided, and amended schedules, is satisfied the modification is not possible.

Based on the foregoing, the court will grant the Motion for Hardship Discharge.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Hardship Discharge filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Hardship Discharge is granted.

28. [15-27255](#)-C-13 ROBERT CLAYCAMP
LBG-1 Lucas Garcia

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
9-16-15 [[8](#)]

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2015. 14 days' notice is required. This requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

The Motion to Extend the Automatic Stay is granted.
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PREVIOUSLY

Debtor served and noticed this motion for hearing before the Honorable Michael McManus on October 5, 2015 at 1:30 p.m. On October 8, 2015, this case was transferred to Department C for hearing before the Honorable Christopher Klein.

MOTION

Robert Richard Claycamp ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-30438) was dismissed

on May 11, 2015, after Debtor failed to procure motions to value collateral upon which his plan relied. See Order, Bankr. E.D. Cal. No. 14-30438, Dckt. 87, May 11, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

CREDITOR'S OPPOSITION

Creditor, First U.S. Community Credit Union, opposes the motion to extend stay. Creditor holds a second deed of trust on Debtor's real property commonly known as 550 West Broad Street, Nevada City, California. Creditor asserts the present bankruptcy case was not filed in good faith, and that Debtor has not provided clear and convincing evidence to rebut the presumption of bad faith. Creditor asserts Debtor has filed this second case in order to hinder or delay Creditor's efforts to pursue its collateral. Creditor asserts Debtor's first case was dismissed for Debtor's lack of prosecution and unreasonable delay prejudicial to creditors, that there has been no substantial change in Debtor's financial or personal affairs, and Debtor has not established any other reason to conclude that this case will be concluded with a confirmed plan that will be fully performed.

TRUSTEE RESPONSE

Chapter 13 Trustee states that he does not take a position on this motion.

DEBTOR'S RESPONSE

Debtor impresses upon the court the gravity of granting the extension of the stay, asserting that if the court does not extend the stay, Creditor will immediately move to foreclose the property. Debtor was unable to show, appearing pro se in the previous case, that the value of his home does not support the second mortgage and that Creditor should be treated as a general unsecured creditor. If Creditor is correct that the value of the home and values are increasing, a delay will have no negative effect on them.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor through his counsel provides that Debtor attempted his previous chapter 13 bankruptcy in pro per, and that his self-representation was a key contributing factor to Debtor's unknowing and unintentional failure to fulfill the duties of a Debtor in bankruptcy. His inability to procure an order valuing certain collateral led to the collapse of the feasibility of his plan.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 15, 2015. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.
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Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$2,084.36 delinquent in plan payments to Trustee to date and the next scheduled payment of \$2,084.36 is due September 25, 2015. The case was filed on July 24, 2015, and Debtor has paid \$0 into the plan to date.
2. Debtor has claimed exemptions under CCP § 703.140(b) and appears married based on the Statement of Current Monthly Income. Debtor's spouse has not joined on the petition. CCP § 703.140(a)(2) requires Debtor to file a spousal waiver, signed by Debtor and Debtor's spouse for use of the claimed exemptions.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

30. [15-24061](#)-C-13 RANDY RICHARDSON AND MOTION TO CONFIRM PLAN
WSS-1 JACQUELYN RAMIREZ-RICHARDSON 8-31-15 [[49](#)]
W. Steven Shumway

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the basis that:

1. Debtor is \$3000 delinquent in plan payments to Trustee to date, and the next scheduled payment of \$3000 is due on October 25, 2015. Debtor has paid \$9,320 into the plan to date.
2. The plan will not complete within 60 months as required under 11 U.S.C. § 1322(d). According to Trustee's calculations, the plan will take 97 months to pay 100% at the current payment. Instead, Trustee estimates the required payment will be \$3,800 to pay the plan in full in 60 months.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Also #32

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain of Debtor's ability to pay. Debtor proposes a total paid in of \$31,112 through September 4, 2015 and \$4,190 beginning with September 2015 payment. Debtor has not filed a supplemental schedule I or J in support of the motion, and has not provided current paystubs to Trustee. The most recently filed schedules I and J reflect Debtor's ability to pay \$3,893.33 monthly.
2. Debtor is delinquent \$4,190 under the terms of the proposed plan and is delinquent \$19,445 under the confirmed plan. Debtor has paid total \$31,112 to Trustee with the last payment posted May 15, 2015.

The court shares Trustee's concerns, and notes that Debtor does not appear capable of making plan payments as proposed, and in fact has not made the first payment of \$4,190 under the terms of the proposed plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 29, 2015. 28 days' notice is required. This requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss.

PREVIOUSLY

At the hearing on September 9, 2015, the court continued the instant Motion to Dismiss to 2:00 p.m. on October 20, 2015 to be heard in conjunction with the motion to confirm the Chapter 13 Plan

MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$31,112 with the last payment received May 15, 2015. Trustee shows \$42,779 is due, and thus debtor is delinquent \$11,667 in plan payments. Debtor's monthly payment is \$3,889. Prior to the hearing, an additional \$3,889 will become due, and as a result debtor will need to pay \$15,556 to be current by the hearing.

DEBTOR'S RESPONSE

Debtor states that she fell behind on payments because she was not receiving unemployment, but that she has been offered new employment beginning September 15, 2015. Debtor states that she will have a modified plan on file and noticed for confirmation before this hearing date.

DISCUSSION

The court is not convinced that Debtor is actively prosecuting this chapter 13 case. The court has denied Debtor's Motion to Modify Plan, because Debtor has not sufficiently or to the court's satisfaction explained how she will be able to afford the increased plan payments as proposed in the modified plan filed September 4, 2015. Moreover, Debtor proposed paying an increased amount of \$4,190 per month starting September 2015. Debtor did not transmit that payment to Trustee, and is now delinquent \$19,445 in plan payments to Trustee. Though Debtor admits to having lost her job, having difficulty obtaining unemployment benefits, and now having some sort of new income, no current financial information is provided.

Debtor has not shown that the case is being actively prosecuted. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is granted and the case is dismissed.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 26, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. [15-26366](#)-C-13 LINDA LOVELACE AND GLORIA
DPC-1 HOUSTON

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK

Also #35 Eamonn Foster

9-15-15 [[17](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 15, 2015. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Nationstar Mortgage on a second deed of trust. To date, Debtor has not filed such motion.

DISCUSSION

The court docket reflects that on September 30, 2015, Debtors filed a Motion to Value Collateral. Dckt. 21. On October 6, 2015, Creditor filed a responsive motion stating its non-opposition. Debtors have resolved Trustee's only basis for objection, and the objection is thus overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 11, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. [15-26366](#)-C-13 LINDA LOVELACE AND GLORIA OBJECTION TO CONFIRMATION OF
MDE-1 HOUSTON PLAN BY THE BANK OF NEW YORK
Eamonn Foster MELLON
9-11-15 [[14](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 11, 2015. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Creditor, The Bank of New York Mellon f/k/a The Bank of New York as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S8, as serviced by Nationstar Mortgage LLC, opposes confirmation of the Plan on the basis that Debtors' plan fails to provide for a retention of lien securing Creditor's claim, and the value of the property to be distributed is less than the allowed claim of Creditor. Debtors' plan relied upon a Motion to Value, which has not been filed.

DISCUSSION

While the court believed Creditor's objection to be meritorious at the time of filing, [FN1] Creditor has not properly noticed the parties or submitted evidence upon which the court may rely establishing the factual allegations asserted. The Local Bankruptcy Rules provide the standards and guidelines for the contents of the notice and evidence required.

FN.1. The court notes, however, that Creditor's basis for objection has been resolved as Debtors have filed a Motion to Value the Collateral of Creditor, Dckt. 21.

Local Bankruptcy Rule 9014-1(d)(4) provides: "The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition."

Local Bankruptcy Rule 9014-1(d)(7) provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Here, the notice provided to parties, Dckt. 15, provides only the date, time, and location of hearing on the instant objection. The notice does not provide to potential respondents whether written opposition must be filed. Next, Creditor has submitted no declaration to substantiate the objections submitted.

For the aforementioned reasons, the court will overrule the instant objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on August 11, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the October 6, 2015 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 23, 2015. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to continue the Objection to November 17, 2015 at 2:00 p.m.
--

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Mirabella Investments Group, set for hearing on October 6, 2015. If the court does not grant the motion, Debtors' plan does not have sufficient monies to pay the claim in full and should be denied confirmation.

DISCUSSION

The court notes that on October 6, 2015, hearing on the Motion to Value the Collateral of Mirabella Investments Group, LLC, Dckt. Control No. RWF-1, came on calendar. At the hearing, Creditor Mirabella Investments Group, LLC, requested a continuance and additional time in which to conduct an appraisal of the collateral. The court continued the motion for 30-45 days in order to permit Creditor time to obtain the verified appraisal. Dckt. 29.

Noting that the instant basis for objection to confirmation of the plan relies upon whether the court grants the Motion to Value, the court will continue the instant motion to November 17, 2015 at 2:00 p.m. to be heard in conjunction with the Motion to Value on calendar for the same date and time.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan
is continued to November 17, 2015 at 2:00 p.m.

37. [15-26482](#)-C-13 STEPHEN ANDERSON
DPC-1 Dale Orthner

OBJECTION TO DISCHARGE BY DAVID
CUSICK
9-9-15 [[16](#)]

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. 28 days' notice is required. This requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on September 9, 2015. Dckt. 16.

The Objector argues that Stephen C. Anderson ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on November 15, 2011. Case No. 11-46938. The Debtor received a discharge on February 27, 2012. Case No. 11-46938, Dckt. 14.

The instant case was filed under Chapter 13 on August 14, 2015.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on February 27, 2012, which is less than four-years preceding the date of the filing of the instant case. Case No. 11-46938, Dckt. 14. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-26482), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 15-26482, the case shall be closed without the entry of a discharge.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Trustee is uncertain if schedule I filed in support of this motion is a current reflection of Debtor's budget. In the motion, Debtor states "I fell behind on my plan payments because I was laid off my job and was unemployed for a few months. Unemployment checks did not provide enough income to pay living expenses and Trustee payment." The motion and Debtor's declaration fails to mention if Debtor has returned to work with the same employer at the same rate. Schedule I filed on September 2, 2015 appears to be identical to the schedule I filed with the chapter 13 petition on December 2, 2014.

DEBTOR'S RESPONSE

Debtor responds to Trustee's opposition, stating that Debtor was employed through Kelly Services, which is an agency providing employment at various placements, and which the Debtor has returned to work at the same rate after receiving unemployment.

DISCUSSION

Debtor has clarified Trustee's basis for opposition. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is granted and the modified plan filed September 2, 2015 is confirmed.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 27, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to . . . the Motion to Confirm the Plan.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan because this plan was denied confirmation on September 3, 2015, Dckt. 45, and the minutes for the hearing, Dckt. 42, reflect that the plan filed on June 23, 2015 was not filed or proposed in good faith.

CREDITOR OPPOSITION

Creditor Central Mortgage Company DBA Central Mortgage Loan Servicing Company opposes the instant motion to confirm plan. This Motion seeks to approve a chapter 13 plan filed June 23, 2015, the only chapter 13 plan proposed by Debtor. Creditor objected to that chapter 13 plan. Dckt. 29. Rather than responding to the objection, Debtor filed this Motion two days before Creditor's hearing on the objection. Debtor's motion appears to have been filed to further delay and hinder Creditor's rights with regard to the property.

First, the court has already sustained Creditor's basis for objecting to chapter 13 plan, and determined the plan was not proposed in good faith. Second, the central issue in Debtor's proposed plan is a proposed request for loan modification. However, Debtor is not a borrower on the Note at issue and does not hold record title to the subject property. No requests for loan

modification have been submitted since the petition was filed. Finally, Debtor's proposed adequate protection payments of \$1,600 per month are less than half of the current monthly payments and do not begin to cover the pre-petition arrears owed to Creditor.

Creditor asserted in its Objection to Confirmation and again here now the following facts. Central Mortgage Company opposes confirmation of the Plan on the basis that the Plan proposes a loan modification and Debtor is not a borrower on the Note at issue and does not hold record title to the subject property. Moreover, no requests for a loan modification have been submitted since the petition was filed. As such, it appears that the bankruptcy and the proposed plan were not filed in good faith. Rather, they were filed to delay and hinder Central Mortgage's right to foreclose. As such, the Debtor's proposed Chapter 13 Plan should be denied and the bankruptcy case should be dismissed. (See 11 U.S.C. §1325(a)(3)(7).)

Sheila Francois has since told Central Mortgage that the Property was transferred to Ms. Times to save the Property from foreclosure after she ran into problems paying the mortgage.

On July 27, 2006, Ms. Times executed a Grant Deed transferring the Property to herself and Sheila Francois as joint tenants. Mr. Francois is not referenced in the Grant Deed as a person who holds an interest in the Property.

The Debtor's wife, Sheila Francois, was added to the Note as a co-borrower by way of an Assumption Agreement dated January 1, 2008. On July 3, 2009, Ms. Times and Sheila Francois obtained a loan modification. Debtor was not a party to the Assumption Agreement or the Loan Modification Agreement. Moreover, the Debtor is not referenced in any of the documents relating to the loan modification request.

The subject loan went into default on February 1, 2014. A Notice of Default was recorded on September 3, 2014, in the Solano County Recorder's office as Instrument No. 201400066730.

On January 22, 2015, Sheila Francois filed for Chapter 13 Bankruptcy protection in the U.S. Bankruptcy Court, Eastern District of California, Case No. 15-20434. The case was dismissed by the Court on February 20, 2015.

On March 19, 2015, after Sheila Francois' first bankruptcy case was dismissed, Ms. Times and Sheila Francois conveyed their interest in the Property to Silverstein & Wolf Corp. as evidenced by the Warranty Deed recorded in the Solano County Recorder's office as Instrument No. 01500022172.

On March 23, 2015, Sheila Francois filed a second Chapter 13 Bankruptcy Petition in the U.S. Bankruptcy Court, Eastern District of California, Case No. 15-22278. This case was dismissed by the Court on April 20, 2015.

On or about May 26, 2015, the Debtor filed a Chapter 13 bankruptcy petition. On June 23, 2015, Debtor filed his proposed Chapter 13 Plan. The proposed Chapter 13 Plan identifies the debt owed to Central Mortgage as a Class 1 claim.

The Debtor does not have an interest in the Property which was conveyed by Ms. Times and Sheila Francois to Silverstein & Wolf Corp. on March 19, 2015.

Even if we assume the Debtor has an interest in the Property (an issue which is clearly in dispute), the Debtor's proposed Chapter 13 Plan cannot be

confirmed. First, the Debtor is not a borrower on the Note. More importantly, Ms. Times and Sheila Francois (the borrowers) have not submitted a request for a loan modification to Central Mortgage. Finally, the proposed adequate protection payments are insufficient as they account for less than half of the monthly mortgage payment due beginning August 1, 2015, which is \$3,298.00.

DEBTOR'S RESPONSE

Debtor responds to Trustee's and Creditor's opposition. Debtor points out that the basis for the Trustee and Creditor oppositions is that this motion is rendered moot by the court's order sustaining Creditor's Objection to Confirmation at hearing on September 1, 2015, Dckt. 42 & 45, however Debtor did not have the opportunity to respond to that Objection. Creditor specified in the notice that Debtor was not required to file an opposition to the Objection to Confirmation because it was served pursuant to Local Bankruptcy Rule 9014-1(f)(2), and Debtor was entitled to hearing on September 1, 2015. The court instead resolved the matter off calendar and on the motions filed, pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Further, Debtor disputes Creditor's characterization of the facts, pointing to an Assumption Agreement with Creditor, recorded on November 26, 2008, which can reasonably be construed to waive any objections as to transfers between Artie Times and Sheila Francois.

Debtor further provides that with regard to Creditor's characterization of the transfer of the Property to Silverstein & Wolf Corp. that the deed presented by Creditor in the exhibits indicates that the transfer was only of a 25% interest and not the entire interest in the Property. Debtor provides that on October 1, 2015, Debtor recorded a deed with the Solano County Recorder, which in effect rescinds the earlier transfer of 25% interest to Silverstein & Wolf Corp.

Asserting there was "fraud in the inducement." Debtor's counsel instructed Debtor to seek a rescission of the transfer, and Debtor received Quit Claim Deed transferring title back to Artie Times and Sheila Francois. October 19, 2015.

Debtor states a fractional interest from Sheila Francois from an interspousal transfer, and asserts he will move forward with the loan modification. Debtor states that Artie Times has given or is giving Debtor's wife a power of attorney to work out a loan modification with Creditor, and thus it is not necessary for Artie Times to be involved with the loan modification effort.

Finally, Debtor disputes that the adequate protection payment is insufficient, stating that relative to the value of the property, it is adequate.

DISCUSSION

The Debtor correctly points out that the court resolved Creditor's Objection to Confirmation off calendar, despite being noticed accordingly to Local Bankruptcy Rule 9014-1(f)(2).

The court has reviewed the Debtor's response, declaration, and accompanying exhibits. Debtor has submitted the Quit Claim Deed, in which Silverstein & Wolf Corp. conveys releases and quit claims to Grantees, Artie Times & Seila Francois dated October 1, 2015. Exhibit A, Dckt. 74. However,

Debtor has provided no documentation or evidence showing that Debtor in fact holds an interest in the subject property, even through interspousal transfer. It appears the question remains of whether Debtor holds an interest in the real property for which he seeks to enter into a loan modification agreement.

The court will resolve this matter in open court and render its decision upon hearing the oral arguments of the parties.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is

Final Ruling: No appearance at the October 20, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2015. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtors having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on September 2, 2015
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.
